

AMENDMENTS TO LB 1021

1 1. Insert the following new sections:

2 "Section 1. Sections 1 to 33 of this act shall be known
3 and may be cited as the Cremation of Human Remains Act.

4 Sec. 2. For purposes of the Cremation of Human Remains
5 Act, unless the context otherwise requires:

6 (1) Alternative container means a container in which
7 human remains are placed in a cremation chamber for cremation. An
8 alternative container shall:

9 (a) Be composed of readily combustible materials suitable
10 for cremation;

11 (b) Be able to be closed in order to provide a complete
12 covering of the human remains;

13 (c) Be resistant to leakage or spillage;

14 (d) Be rigid enough for easy handling; and

15 (e) Provide protection for the health and safety of
16 persons employed by the crematory authority;

17 (2) Authorizing agent means a person vested with the
18 right to control the disposition of human remains pursuant to
19 section 71-1339;

20 (3) Casket means a rigid container of wood, metal, or
21 similar material, ornamented and lined with fabric, which is
22 designed for encasement of human remains;

23 (4) Cremated remains means human remains recovered after
24 the completion of the cremation, and the processing of such remains

1 by pulverization, leaving only bone fragments reduced to
2 unidentifiable dimensions. Cremated remains includes any
3 unrecoverable residue of foreign matter, such as eyeglasses,
4 bridgework, or similar material, that has been cremated with the
5 human remains;

6 (5) Cremated remains receipt form means a form provided
7 by a crematory authority to an authorizing agent or his or her
8 representative that identifies the cremated remains and the person
9 authorized to receive such remains. The form shall include the
10 name of the deceased, the date, time, and place of receipt of the
11 cremated remains of the deceased, and the signatures of the
12 crematory authority and the authorizing agent or representative;

13 (6) Cremation means the technical process that uses heat
14 and evaporation to reduce human remains to bone fragments;

15 (7) Cremation chamber means the enclosed space within
16 which a cremation takes place;

17 (8) Crematory means a building or portion of a building
18 which contains a cremation chamber and holding facility;

19 (9) Crematory authority means the legal entity licensed
20 by the department to maintain and operate a crematory and perform
21 cremation;

22 (10) Crematory operator means a person who is responsible
23 for the operation of a crematory;

24 (11) Delivery receipt form means a form provided by a
25 funeral establishment to a crematory authority to document receipt
26 of human remains for the purpose of cremation and which includes
27 the name of the deceased, the time and date of delivery of such

1 remains, and the signatures of the crematory authority and the
2 funeral director or the funeral director's representative;

3 (12) Department means the Department of Health and Human
4 Services Regulation and Licensure;

5 (13) Director means the Director of Regulation and
6 Licensure;

7 (14) Funeral director has the same meaning as in section
8 71-507;

9 (15) Funeral establishment has the same meaning as in
10 section 71-1301;

11 (16) Holding facility means an area within or adjacent to
12 a crematory designated for the retention of human remains prior to
13 cremation. A holding facility shall:

14 (a) Comply with any applicable public health law;

15 (b) Preserve the dignity of the human remains;

16 (c) Provide for the health and safety of persons employed
17 by the crematory authority operating such facility; and

18 (d) Be secure from access by any person not authorized by
19 the crematory authority operating such facility;

20 (17) Human remains means the body of a deceased person,
21 or a human body part, in any stage of decomposition and includes
22 limbs or other portions of the anatomy that are removed from a
23 person or human remains for medical purposes during treatment,
24 surgery, biopsy, autopsy, or medical research; and

25 (18) Temporary container means a receptacle made of
26 cardboard, plastic, or similar material in which cremated remains
27 are placed until such remains are placed in an urn or other

1 permanent container.

2 Sec. 3. A crematory shall not be established, operated,
3 or maintained in this state unless a crematory authority obtains a
4 license issued by the department under the Cremation of Human
5 Remains Act to operate the crematory. The department shall issue a
6 license to a crematory authority that satisfies the requirements
7 for licensure under the act. Human remains shall not be cremated
8 in this state except at a crematory operated by a crematory
9 authority licensed under the act. Crematory authorities operating
10 crematories on the operative date of this act which apply for
11 licensure within sixty days after the operative date of this act
12 shall be presumed to meet requirements for initial or provisional
13 licensure under the act.

14 Sec. 4. (1) A crematory authority shall not be licensed
15 unless the crematory operated by such authority conforms to all
16 building codes and environmental standards or is exempt from such
17 requirements because the crematory was established prior to the
18 operative date of this act.

19 (2) A crematory may be constructed on the property of or
20 property adjacent to any cemetery, on the property of or on
21 property adjacent to any funeral establishment that is properly
22 zoned commercial or industrial, or at any other location consistent
23 with zoning and environmental regulations.

24 Sec. 5. An applicant for an initial or renewal license
25 as a crematory authority shall file a written application with the
26 department. The application shall be accompanied by the license
27 fee required pursuant to section 9 of this act and shall set forth

1 the full name and address of the applicant, the address and
2 location of the crematory, the name of the crematory operator, a
3 certificate confirming that the crematory operator has attended a
4 training course provided by the Cremation Association of North
5 America or by a manufacturer of the cremation chamber prior to the
6 issuance of the license, the name and address of the owner of the
7 crematory, and additional information as required by the
8 department, including affirmative evidence of the applicant's
9 ability to comply with rules and regulations adopted and
10 promulgated under the Cremation of Human Remains Act. The
11 application shall include the applicant's social security number if
12 the applicant is an individual. The social security number shall
13 not be public record and may only be used for administrative
14 purposes.

15 Sec. 6. (1) A crematory authority desiring to relocate a
16 crematory shall file an application with the department on a form
17 provided by the department at least thirty days prior to the
18 designated date of such relocation. The application for relocation
19 shall be accompanied by a fee of not less than fifteen dollars and
20 not more than one hundred fifty dollars.

21 (2) A crematory authority desiring to change ownership
22 shall file an application with the department on a form provided by
23 the department at least thirty days prior to the designated date of
24 such change in ownership. The application shall be accompanied by
25 a fee of not less than fifteen dollars and not more than one
26 hundred fifty dollars.

27 (3) A crematory authority desiring to change its name

1 shall file an application with the department on a form provided by
2 the department at least thirty days prior to such change in name.
3 The form shall be accompanied by a fee of ten dollars.

4 Sec. 7. Except as otherwise provided in the Cremation of
5 Human Remains Act, licenses issued pursuant to the act shall expire
6 five years after the date of issuance. Licenses shall be issued
7 only for the crematory authority named in the application and shall
8 not be transferable or assignable.

9 Sec. 8. A provisional license may be issued to a
10 crematory authority that substantially complies with requirements
11 for licensure under the Cremation of Human Remains Act and rules
12 and regulations adopted and promulgated under the act. Such
13 provisional license shall be valid for a period of up to one year,
14 shall not be renewed, and may be converted to a regular license
15 upon a showing that the crematory authority fully complies with the
16 requirements for licensure under the act and rules and regulations.

17 Sec. 9. (1) Licensure activities under the Cremation of
18 Human Remains Act shall be funded by license fees as provided in
19 this section. An applicant for an initial or renewal license under
20 section 5 of this act shall pay a license fee as provided in this
21 section.

22 (2) The fee for an initial or a renewal license shall
23 include a base fee of fifty dollars and an additional fee of up to
24 three hundred dollars, as determined by the department in rules and
25 regulations.

26 (3) If the license application is denied, the license fee
27 shall be returned to the applicant, except that the department may

1 retain up to twenty-five dollars as an administrative fee and may
2 retain the entire license fee if an inspection has been completed
3 prior to such denial.

4 (4) The department shall also collect the fee provided in
5 subsection (2) of this section for reinstatement of a license that
6 has lapsed or has been suspended or revoked. The department shall
7 collect a fee of ten dollars for a duplicate original license, a
8 fee of twenty-five dollars for a certified statement that a
9 crematory authority is licensed in this state, and a fee of five
10 dollars for verification that a crematory authority is licensed in
11 this state.

12 (5) The department shall adopt and promulgate rules and
13 regulations for the establishment of fees under the act.

14 (6) The department shall collect all fees authorized
15 under the act and remit such fees to the State Treasurer for credit
16 to the Department of Health and Human Services Regulation and
17 Licensure Cash Fund. Such fees shall only be used for activities
18 related to the licensure of crematory authorities.

19 Sec. 10. The department may inspect or provide for the
20 inspection of any crematory operated by a crematory authority
21 licensed under the Cremation of Human Remains Act in such manner
22 and at such times as provided in rules and regulations adopted and
23 promulgated by the department. The department shall issue an
24 inspection report and provide a copy of the report to the crematory
25 authority within ten working days after the completion of an
26 inspection.

27 Sec. 11. If the inspection report issued under section

1 10 of this act contains findings of noncompliance by a crematory
2 authority with any applicable provisions of the Cremation of Human
3 Remains Act or rules and regulations adopted and promulgated under
4 the act, the department shall review such findings within twenty
5 working days after such inspection. If the department determines
6 that the evidence supports a finding of noncompliance, the
7 department may send a letter to the crematory authority requesting
8 a statement of compliance. The letter shall include a description
9 of each alleged violation, a request that the crematory authority
10 submit a statement of compliance within ten working days, and a
11 notice that the department may take further steps if the statement
12 of compliance is not submitted. The statement of compliance shall
13 indicate any steps which have been or will be taken to correct each
14 violation and the period of time estimated to be necessary to
15 correct each violation. If the crematory authority fails to submit
16 and implement a statement of compliance which indicates a good
17 faith effort to correct the violations, the department may proceed
18 pursuant to sections 13 to 17 of this act.

19 Sec. 12. (1) Any person may submit a complaint to the
20 department and request investigation of an alleged violation of the
21 Cremation of Human Remains Act or rules and regulations adopted and
22 promulgated under the act. The department shall review all
23 complaints and determine whether to conduct an investigation
24 relating to such complaints.

25 (2) A complaint submitted to the department shall be
26 confidential. A person submitting a complaint shall be immune from
27 criminal or civil liability of any nature, whether direct or

1 derivative, for submitting a complaint or for disclosure of
2 documents, records, or other information to the department.

3 Sec. 13. (1) If the director determines that a crematory
4 authority is operating a crematory so as to create an imminent
5 danger of death or serious physical harm to persons employed by or
6 in proximity to such crematory, he or she may temporarily suspend
7 or temporarily limit the license of the crematory authority and may
8 order the temporary closure of the crematory pending further action
9 by the department. The department shall also simultaneously
10 institute proceedings for revocation, suspension, or limitation of
11 the license. A hearing shall be held no later than ten days after
12 the date of such temporary suspension or temporary limitation.

13 (2) A continuance of the hearing shall be granted by the
14 department upon written request from the licensee. Such
15 continuance shall not exceed thirty days. A temporary suspension
16 or temporary limitation order by the director shall take effect
17 when served upon the crematory authority.

18 (3) A temporary suspension or temporary limitation under
19 this section shall not exceed ninety days. If a decision is not
20 reached within that period, the temporary suspension or temporary
21 limitation shall expire.

22 (4) Any person aggrieved by a decision of the department
23 after a hearing as provided in this section may appeal. The appeal
24 shall be in accordance with the Administrative Procedure Act.

25 Sec. 14. The department may deny or refuse to renew a
26 license under the Cremation of Human Remains Act to any crematory
27 authority that fails to meet the requirements for licensure

1 provided in the act or in rules and regulations adopted and
2 promulgated under the act, including (1) failing an inspection
3 pursuant to section 10 of this act, (2) having had a license
4 revoked within the two-year period preceding application, or (3)
5 any of the grounds listed in section 15 of this act.

6 Sec. 15. The department may take disciplinary action
7 against a crematory authority licensed under the Cremation of Human
8 Remains Act on any of the following grounds:

9 (1) Violation of the Cremation of Human Remains Act or
10 rules and regulations adopted and promulgated under the act;

11 (2) Conviction of any crime involving moral turpitude;

12 (3) Conviction of a misdemeanor or felony under state
13 law, federal law, or the law of another jurisdiction which, if
14 committed within this state, would have constituted a misdemeanor
15 or felony under state law and which has a rational connection with
16 the applicant's or licensee's fitness or capacity to practice as a
17 crematory authority;

18 (4) Conviction of a violation of the act pursuant to
19 section 19 of this act;

20 (5) Committing or permitting, aiding, or abetting the
21 commission of any unlawful act;

22 (6) Obtaining a license as a crematory authority by false
23 representation or fraud;

24 (7) Unprofessional conduct, which includes (a)
25 misrepresentation or fraud in the operation of a crematory or (b)
26 aiding or abetting an unlicensed person to operate a crematory; or

27 (8) Failure to allow an agent or employee of the

1 Department of Health and Human Services, the Department of Health
2 and Human Services Finance and Support, or the Department of Health
3 and Human Services Regulation and Licensure access to a crematory
4 operated by the crematory authority for the purposes of inspection,
5 investigation, or other information collection activities necessary
6 to carry out the duties of such department.

7 Sec. 16. (1) The department may impose any one or a
8 combination of the following types of disciplinary action against
9 the license of crematory authority:

10 (a) A fine not to exceed five hundred dollars per
11 violation;

12 (b) A limitation or limitations on the license and upon
13 the right of the crematory authority to operate a crematory to the
14 extent, scope, or type of operation, for such time, and under such
15 conditions as the director finds necessary and proper;

16 (c) A period of probation not to exceed two years during
17 which the crematory may continue to operate under terms and
18 conditions fixed by the order of probation;

19 (d) A period of suspension not to exceed two years during
20 which the crematory may not operate; and

21 (e) Revocation and permanent termination of the license
22 and the licensee may not apply for a license as a crematory
23 authority for a minimum of two years after the effective date of
24 the revocation.

25 (2) Any fine imposed and unpaid under the Cremation of
26 Human Remains Act shall constitute a debt to the State of Nebraska
27 which may be collected in the manner of a lien foreclosure or sued

1 for and recovered in any proper form of action in the name of the
2 State of Nebraska in the district court of the county in which the
3 crematory is located. The department shall, within thirty days
4 after receipt, remit fines to the State Treasurer for credit to the
5 permanent school fund.

6 Sec. 17. Any party to a decision of the department under
7 the Cremation of Human Remains Act may appeal such decision. The
8 appeal shall be in accordance with the Administrative Procedure
9 Act.

10 Sec. 18. (1) A license issued to a crematory authority
11 under the Cremation of Human Remains Act that has lapsed for
12 nonpayment of fees is eligible for reinstatement at any time by
13 applying to the department and paying the applicable fee as
14 provided in section 9 of this act.

15 (2) A license issued to a crematory authority that has
16 been suspended is eligible for reinstatement at the end of the
17 period of such suspension upon successful completion of an
18 inspection and payment of the applicable fee as provided in section
19 9 of this act.

20 (3) A license issued to a crematory authority that has
21 been placed on probation is eligible for reinstatement at the end
22 of the period of probation and upon successful completion of an
23 inspection if the department determines an inspection is warranted.

24 (4) A license issued to a crematory authority that has
25 been suspended may be reinstated prior to the completion of the
26 term of such suspension as provided in this subsection. Upon
27 petition from a licensee and after consideration of materials

1 submitted with such petition, the director may order an inspection
2 or other investigation of the licensee. On the basis of material
3 submitted by the licensee and the results of any inspection or
4 investigation by the department, the director shall determine
5 whether to grant full reinstatement of the license, to modify the
6 suspension, or to deny the petition for reinstatement. The
7 director's decision shall become final thirty days after mailing
8 the decision to the licensee unless the licensee requests a hearing
9 within such thirty-day period. Any requested hearing shall be held
10 according to rules and regulations of the department for
11 administrative hearings in contested cases. Any party to the
12 decision shall have a right to judicial review under the
13 Administrative Procedure Act.

14 (5) A license issued to a crematory authority that has
15 been revoked is not eligible for relicensure until two years after
16 the date of such revocation. A reapplication for an initial
17 license may be made at the end of the two-year period.

18 (6) The department may adopt and promulgate rules and
19 regulations to carry out this section.

20 Sec. 19. (1) Maintenance or operation of a crematory in
21 violation of the Cremation of Human Remains Act or any rules and
22 regulations of the department adopted and promulgated pursuant
23 thereto is a public nuisance and may be abated as a nuisance as
24 provided by law.

25 (2) Establishing, operating, or maintaining a crematory
26 subject to the Cremation of Human Remains Act without being
27 licensed as a crematory authority under the act, holding oneself

1 out to the public as a crematory authority without being licensed
2 under the act, or performing a cremation without a cremation
3 authorization form signed by an authorizing agent and a completed
4 permit for transit or cremation as provided by the department or a
5 cremation permit is a Class III misdemeanor.

6 (3) Signing a cremation authorization form with actual
7 knowledge that the form contains false or incorrect information is
8 a Class III misdemeanor.

9 (4) A violation of any other provision of the Cremation
10 of Human Remains Act is a Class III misdemeanor.

11 Sec. 20. The department may maintain an action in the
12 name of the State of Nebraska for an injunction against any person
13 for establishing, operating, or maintaining a crematory without
14 first obtaining a license as a crematory authority under the
15 Cremation of Human Remains Act. In charging any defendant in a
16 complaint in such action, it shall be sufficient to charge that
17 such defendant did, upon a certain day and in a certain county,
18 establish, operate, or maintain a crematory without obtaining a
19 license to do so, without alleging any further or more particular
20 facts concerning the same.

21 Sec. 21. The right to authorize the cremation of human
22 remains and the final disposition of the cremated remains, except
23 in the case of a minor subject to section 23-1824 and unless other
24 directions have been given by the decedent in the form of a
25 testamentary disposition or a pre-need contract, vests pursuant to
26 section 71-1339.

27 Sec. 22. (1) A crematory authority upon receiving human

1 remains shall sign a delivery receipt form and shall hold the human
2 remains, prior to cremation, as provided in this section.

3 (2) If a crematory authority is unable to cremate the
4 human remains immediately upon taking receipt thereof, the
5 crematory authority shall place the human remains in a holding
6 facility.

7 (3) A crematory authority shall not be required to accept
8 for holding a cremation container from which there is any evidence
9 of leakage of the body fluids from the human remains therein.

10 (4) If human remains received by the crematory authority
11 are not embalmed, such remains shall be held no longer than
12 twenty-four hours from the time of death unless the human remains
13 are placed within a refrigerated facility in accordance with the
14 laws of this state.

15 Sec. 23. (1) No unauthorized person shall be permitted
16 in the crematory while any human remains are in the crematory
17 awaiting cremation, being cremated, or being removed from the
18 cremation chamber.

19 (2) The human remains of more than one person shall not
20 be simultaneously cremated within the same cremation chamber unless
21 the crematory authority received specific written authorization
22 from the authorizing agent for the human remains to be so cremated.

23 Sec. 24. (1) Except as otherwise provided in this
24 section, a crematory authority shall not cremate human remains
25 until it has received:

26 (a) A cremation authorization form or a fax thereof
27 signed by an authorizing agent containing at least the following

1 information:

2 (i) The identity of the human remains;

3 (ii) Notification that the death did or did not occur
4 from a disease declared by the department to be infectious,
5 contagious, communicable, or dangerous to the public health;

6 (iii) The name of the authorizing agent and the
7 relationship between the authorizing agent and the deceased;

8 (iv) Authorization by the authorizing agent for the
9 crematory authority to cremate the human remains;

10 (v) A representation that the authorizing agent is aware
11 of no objection to the human remains being cremated by any person
12 who has a right to control the disposition of the human remains;

13 (vi) The name of the person authorized to claim the
14 cremated remains from the crematory authority;

15 (vii) The disposition of the cremated remains;

16 (viii) The identity of the funeral director involved in
17 the preparation of the human remains for cremation, if any;

18 (ix) A representation that the human remains do not
19 contain any material or implants that may be potentially hazardous
20 to equipment or persons performing the cremation; and

21 (x) Date and place of death;

22 (b) A completed and executed permit for transit or
23 cremation as provided by the department or the appropriate
24 cremation permit from the state from which the human remains were
25 delivered, indicating that the human remains are to be cremated;

26 and

27 (c) A delivery receipt form.

1 (2) A crematory authority shall not accept human remains
2 for cremation without a proper label indicating the name of the
3 deceased and the name and location of the funeral establishment
4 placed on the exterior of the alternative container or casket.

5 (3) A crematory authority shall retain, in printed or
6 electronic format, copies of the cremation authorization form,
7 permit for transit or cremation as provided by the department,
8 cremated remains receipt form, delivery receipt form, and any other
9 necessary records as required pursuant to the Cremation of Human
10 Remains Act for at least seven years after the cremation.

11 Sec. 25. (1) Any person signing a cremation
12 authorization form shall be deemed to warrant the truthfulness of
13 any facts set forth in the cremation authorization form, including
14 the identity of the deceased whose remains are sought to be
15 cremated and the person's authority to order such cremation. Any
16 person signing a cremation authorization form is personally liable
17 for all damages resulting from incorrect or misleading information
18 contained in such form.

19 (2) A crematory authority has authority to cremate human
20 remains upon the receipt of a cremation authorization form signed
21 by an authorizing agent and a completed permit for transit or
22 cremation or cremation permit as required by law.

23 Sec. 26. (1) No crematory authority shall make or
24 enforce any rules requiring that human remains be placed in a
25 casket before cremation or that human remains be cremated in a
26 casket, nor shall the crematory authority refuse to accept human
27 remains for cremation if the human remains are not in a casket.

1 (2) No crematory authority shall accept human remains
2 unless the human remains are delivered to the crematory authority
3 in an alternative container or casket or delivered to the crematory
4 authority's holding facility to be placed in an alternative
5 container or casket. Human remains delivered to a crematory in an
6 alternative container shall not be removed from the alternative
7 container, and the alternative container shall be cremated with the
8 human remains. A crematory authority may refuse a noncombustible
9 casket or any other container that is not an alternative container
10 or a casket or container that is not labeled as required pursuant
11 to subsection (2) of section 24 of this act.

12 Sec. 27. (1) No human remains shall be cremated with the
13 knowledge that the human remains contain a pacemaker or
14 defibrillator or other potentially hazardous implant or condition.
15 The authorizing agent shall take all necessary steps to ensure that
16 any pacemaker or defibrillator or hazardous implant or condition is
17 removed or corrected prior to cremation. If an authorizing agent
18 informs the funeral director and the crematory authority on the
19 cremation authorization form of the presence of a pacemaker or
20 defibrillator or other potentially hazardous implant or condition
21 in the human remains, the funeral director shall ensure that all
22 necessary steps have been taken to remove the pacemaker or
23 defibrillator or hazardous implant or to correct the hazardous
24 condition before delivering the human remains to the crematory. A
25 funeral director who knowingly fails to ensure the removal of the
26 pacemaker or defibrillator or hazardous implant or the correction
27 of the condition prior to delivery and who knowingly delivers such

1 human remains shall be liable for any resulting damages from such
2 failure. If human remains with pacemakers or defibrillators or
3 hazardous implants or conditions are in the custody of a crematory
4 authority, such authority shall have pacemakers or defibrillators
5 or hazardous implants removed or hazardous conditions corrected by
6 a licensed embalmer at a funeral establishment within an embalming
7 preparation room unless the removal or correction is to take place
8 at a medical facility by the appropriate medical personnel.

9 (2) No human remains shall be cremated with the knowledge
10 that the human remains contain jewelry or valuables. The
11 authorizing agent shall take all necessary steps to ensure that any
12 jewelry or valuables are removed prior to cremation. If an
13 authorizing agent informs the funeral director and the crematory
14 authority on the cremation authorization form of the presence of
15 jewelry or valuables on the human remains, the funeral director
16 shall ensure that all necessary steps have been taken to remove the
17 jewelry or valuables before delivering the human remains to the
18 crematory. A funeral director who knowingly fails to ensure the
19 removal of the jewelry or valuables prior to delivery and who
20 knowingly delivers such human remains shall be liable for any
21 resulting damages from such failure. If human remains with jewelry
22 or valuables are in the custody of a crematory authority, such
23 authority shall provide for the removal of such jewelry by a
24 licensed embalmer or his or her agent.

25 Sec. 28. (1) A crematory authority or funeral
26 establishment is not liable for refusing to accept human remains or
27 performing a cremation until such authority or establishment

1 receives a court order or other suitable confirmation that a
2 dispute with respect to such remains has been settled if:

3 (a) It is aware of any dispute concerning the cremation
4 of such human remains; or

5 (b) It has a reasonable basis to believe that such a
6 dispute exists or to question any of the representations made by
7 the authorizing agent with respect to such remains.

8 (2) If a crematory authority or funeral establishment is
9 aware of any dispute concerning the release or disposition of
10 cremated remains, the crematory authority may refuse to release
11 cremated remains until the dispute has been resolved or the
12 crematory authority or funeral establishment has been provided with
13 a court order authorizing the release or disposition of the
14 cremated remains. A crematory authority or funeral establishment
15 may refuse to release or dispose of cremated remains for any other
16 lawful reason.

17 Sec. 29. (1) Upon completion of the cremation, and in so
18 far as is possible, all of the recoverable residue of the cremation
19 process shall be removed from the cremation chamber. In so far as
20 is possible, all residue of the cremation process shall then be
21 separated from any foreign residue or anything other than bone
22 fragments and processed by pulverization so as to reduce the
23 cremated remains to unidentifiable particles. Any foreign residue
24 and anything other than the particles of the cremated remains shall
25 be removed from the cremated remains as far as possible and shall
26 be disposed of by the crematory authority. This subsection shall
27 not apply when the commingling of human remains during cremation is

1 otherwise provided by law. The presence of incidental and
2 unavoidable residue in the cremation chamber used in prior
3 cremation is not a violation of this subsection.

4 (2) The cremated remains with proper identification shall
5 be placed in a temporary container or permanent container selected
6 or provided by the authorizing agent. The cremated remains shall
7 not be contaminated with any other object unless specific
8 authorization has been received from the authorizing agent or as
9 provided in subsection (3) of this section.

10 (3) If the cremated remains will not fit within the
11 dimensions of a temporary container or permanent container, then
12 the remainder of the cremated remains shall be returned to the
13 authorizing agent or his or her representative in a separate
14 identified container.

15 (4) If the cremated remains are to be shipped, the
16 temporary container or permanent container shall be packed securely
17 in a suitable shipping container that complies with the
18 requirements of the shipper. Cremated remains shall be shipped
19 only by a method which has an internal tracking system available
20 and which provides a receipt signed by the person accepting
21 delivery unless otherwise directed in writing by the authorizing
22 agent.

23 Sec. 30. (1) The delivery of the cremated remains to the
24 authorizing agent or as directed by the authorizing agent shall
25 constitute final disposition. The authorizing agent is responsible
26 for the final disposition of the cremated remains as provided in
27 this section. If, after a period of sixty days after the date of

1 cremation, the authorizing agent or his or her representative has
2 not specified or arranged for the final disposition in the manner
3 provided for in this section or claimed the cremated remains for
4 final disposition in the manner provided for in this section, the
5 crematory authority or the funeral establishment in possession of
6 the cremated remains may, after a reasonable attempt is made to
7 establish contact with the authorizing agent or his or her
8 representative, dispose of the cremated remains. This method of
9 disposition may be used by any crematory authority or funeral
10 establishment to dispose of all cremated remains in the possession
11 of a crematory authority or funeral establishment on or after the
12 operative date of this act.

13 (2) Cremated remains shall be delivered or released by
14 the crematory authority to the representative specified by the
15 authorizing agent on the cremation authorization form. The
16 representative of the crematory authority and the representative
17 receiving the cremated remains shall sign a cremated remains
18 receipt form. If the cremated remains are to be shipped, a form
19 used by the shipper in accordance with subsection (4) of section 29
20 of this act may be used in place of a completed cremated remains
21 receipt form if the shipper's form contains the information
22 required for a cremated remains receipt form. Both the delivering
23 party and receiving party shall retain a copy of the form. After
24 delivery, the cremated remains may be transported in any manner
25 within this state without a permit.

26 Sec. 31. The department may adopt and promulgate rules
27 and regulations to implement the Cremation of Human Remains Act,

1 which shall include, but not be limited to, rules and regulations
2 establishing conditions under which human remains of persons whose
3 death was caused by an infectious, contagious, communicable, or
4 dangerous disease may be transported in this state to a crematory
5 for the purpose of cremation, and minimum standards of sanitation
6 for all crematories.

7 Sec. 32. A crematory authority may enact reasonable
8 bylaws not inconsistent with the Cremation of Human Remains Act for
9 the management and operation of a crematory. Nothing in this
10 section shall prevent a crematory authority from enacting bylaws
11 which contain more stringent requirements than those provided in
12 the act.

13 Sec. 33. The Cremation of Human Remains Act shall be
14 construed and interpreted as a comprehensive cremation law, and the
15 provisions of the act shall take precedence over any existing laws
16 or rules and regulations that govern dead human bodies and human
17 remains that do not specifically address cremation.

18 Sec. 34. Section 28-1301, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-1301. (1) The definitions found in section 12-1204
21 shall apply to this section.

22 (2) Except as provided in subsection (3) of this section,
23 a person commits the offense of removing, abandoning, or concealing
24 human skeletal remains or burial goods if he or she:

25 (a) Knowingly digs up, disinters, removes, or carries
26 away from its place of deposit or burial any such remains or goods,
27 attempts to do the same, or aids, incites, assists, encourages, or

1 procures the same to be done;

2 (b) Knowingly throws away or abandons any such remains or
3 goods in any place other than a regular place for burial and under
4 a proper death certificate issued under section 71-182 or 71-605;
5 or

6 (c) Receives, conceals, purchases, sells, transports,
7 trades, or disposes of any such remains or goods if the person
8 knows or has reason to know that such remains or goods have been
9 dug up, disinterred, or removed from their place of deposit or
10 burial or have not been reported in a proper death certificate
11 issued under section 71-182 or 71-605, attempts to do the same, or
12 aids, incites, assists, encourages, or procures the same to be
13 done.

14 (3) This section shall not apply to: (a) A body
15 authorized to be surrendered for purposes of dissection as provided
16 by law; (b) the body of any person directed to be delivered by
17 competent authority for purposes of dissection; (c) the officers of
18 any lawfully constituted cemetery acting under the direction of the
19 board of trustees in removing any human skeletal remains or burial
20 goods from one place of burial in the cemetery to another place in
21 the same cemetery when disinterment and reinterment permits are
22 secured and return made pursuant to section 71-605; (d) any person
23 removing the human skeletal remains or burial goods of a relative
24 or intimate friend from one place of burial in any lawfully
25 constituted cemetery to another when consent for such removal has
26 been obtained from the lawfully constituted authority thereof and
27 permits for disinterment and reinterment secured and return made

1 pursuant to section 71-605; (e) any professional archaeologist
2 engaged in an otherwise lawful and scholarly excavation of a
3 nonburial site who unintentionally encounters human skeletal
4 remains or associated burial goods if the archaeologist complies
5 with the notification requirements of the Unmarked Human Burial
6 Sites and Skeletal Remains Protection Act; or (f) any
7 archaeological excavation by the Nebraska State Historical Society
8 or its designee in the course of execution of the duties of the
9 society if any human skeletal remains or associated burial goods
10 discovered during such excavation are disposed of pursuant to
11 section 12-1208.

12 (4) Violation of this section shall be a Class ~~I~~
13 ~~misdemeanor~~ IV felony.

14 Sec. 81. Section 71-1301, Revised Statutes Supplement,
15 2000, is amended to read:

16 71-1301. For purposes of sections 71-1301 to 71-1306 and
17 71-1326 to 71-1354, unless the context otherwise requires:

18 (1) Accredited school of mortuary science ~~shall mean~~
19 means a school of the same type as those rated Class A by the
20 Conference of Funeral Service Examining Boards of the United
21 States, Inc., approved by the department upon recommendation of the
22 board;

23 (2) Apprentice ~~shall mean~~ means a person registered with
24 the department as an apprentice who is completing a twelve-month
25 apprenticeship under the supervision of a licensed funeral director
26 and embalmer practicing in the State of Nebraska. The licensed
27 funeral director and embalmer ~~shall be~~ is responsible for all

1 funeral assists and embalmings completed by the apprentice;

2 (3) Board ~~shall mean~~ means the Board of Funeral Directing
3 and Embalming;

4 (4) Branch establishment ~~shall mean~~ means a place of
5 business situated at a specific street address or location which is
6 a subsidiary of a licensed funeral establishment, which contains a
7 casket display room, a viewing area, or an area for conducting
8 funeral services, or all of them, and where any portion of the
9 funeral service or arrangements for the disposition of a dead human
10 body is conducted;

11 (5) Casket ~~shall mean~~ means a receptacle for a dead human
12 body and ~~shall~~ does not include vaults, lawn crypts, mausoleums, or
13 other outside receptacles for caskets;

14 (6) Department ~~shall mean~~ means the Department of Health
15 and Human Services Regulation and Licensure;

16 (7) Embalming ~~shall mean~~ means the practice of preparing
17 a dead human body for burial or other final disposal by a licensed
18 funeral director and embalmer or an apprentice, requesting and
19 obtaining burial or removal permits, or assuming any of the other
20 duties incident to the practice of embalming. Any person who
21 publicly professes to be a funeral director and embalmer or an
22 apprentice ~~shall be~~ is deemed to be practicing embalming. The
23 performance of the following acts ~~shall~~ are also ~~be~~ deemed to be
24 the practice of embalming: (a) The disinfection and preservation of
25 dead human beings, entire or in part; and (b) the attempted
26 disinfection and preservation thereof by the use or application of
27 chemical substances, fluids, or gases ordinarily used, prepared, or

1 intended for such purposes, either by outward application of such
2 chemical substances, fluids, or gases on the body or by introducing
3 them into the body, by vascular or hypodermic injection, or by
4 direct introduction into the organs or cavities;

5 (8) Funeral directing ~~shall mean~~ means (a) counseling
6 families or next of kin in regard to the conduct of a funeral
7 service for a dead human body for burial, disposition, or cremation
8 or directing or supervising burial, disposition, or cremation of
9 dead human bodies, - ~~Cremation shall be considered as a final~~
10 ~~disposition of a dead human body the same as interment,~~ (b)
11 providing for or maintaining a funeral establishment, or (c) the
12 act of representing oneself as or using in connection with one's
13 name the title of funeral director, mortician, or any other title
14 implying that he or she is engaged in the business of funeral
15 directing;

16 (9) Funeral establishment ~~shall mean~~ means a place of
17 business situated at a specific street address or location devoted
18 to the care and preparation of dead human bodies for burial,
19 disposition, or cremation or to conducting or arranging funeral
20 services for dead human bodies;

21 (10) Licensee ~~shall mean~~ means a person licensed by the
22 department as a funeral director and embalmer on or after January
23 1, 1994, or a person licensed as a funeral director or embalmer
24 prior to January 1, 1994;

25 (11) Licensure examination ~~shall mean~~ means a national
26 standardized examination, the state jurisprudence examination, and
27 the vital statistic forms examination; and

1 (12) Supervision ~~shall mean~~ means the direct oversight or
2 the easy availability of the supervising funeral director and
3 embalmer. The first twenty-five funeral assists and embalmings
4 shall be completed under direct onsite supervision of the
5 supervising funeral director and embalmer.

6 Sec. 82. Section 71-1339, Revised Statutes Supplement,
7 2000, is amended to read:

8 71-1339. The right to control the disposition of the
9 remains of a deceased person, except in the case of a minor subject
10 to section 23-1824 and unless other directions have been given by
11 the decedent, vests in the following persons in the order named:

12 (1) The surviving spouse of the decedent;

13 (2) If the surviving spouse is incompetent or not
14 available, or if there be no surviving spouse, the decedent's
15 surviving adult children. If there is more than one adult child,
16 any adult child who confirms in writing the notification of all
17 other adult children, may direct the manner of disposition unless
18 the funeral establishment or crematory authority receives written
19 objection to the manner of disposition from another adult child;

20 (3) The decedent's surviving parents;

21 (4) The persons in the next degree of kinship under the
22 laws of descent and distribution to inherit the estate of the
23 decedent. If there is more than one person of the same degree, any
24 person of that degree may direct the manner of disposition;

25 (5) A guardian of the person of the decedent at the time
26 of such person's death;

27 (6) The personal representative of the decedent;

1 (7) The State Anatomical Board or county board in the
2 case of an indigent person or any other person whose disposition of
3 his or her remains is the responsibility of the state or county; or

4 (8) A representative of an entity described in section
5 71-1340 that has arranged with the funeral establishment or
6 crematory authority to cremate a body part in the case of body
7 parts received from such entity described in section 71-1340.

8 A funeral director, funeral establishment, crematory
9 authority, or crematory operator shall not be subject to criminal
10 prosecution or civil liability for carrying out the otherwise
11 lawful instructions of the person or persons described in this
12 section if the funeral director or crematory authority or operator
13 reasonably believes such person is entitled to control the final
14 disposition of the remains of the deceased person. ~~(1) The~~
15 ~~surviving spouse, (2) if the surviving spouse is incompetent or not~~
16 ~~available, or if there be no surviving spouse, adult child of the~~
17 ~~decedent, (3) a surviving parent of the decedent, (4) an adult~~
18 ~~brother or sister of the decedent, (5) an adult person in the next~~
19 ~~degrees of kindred in the order named by the laws of Nebraska as~~
20 ~~entitled to succeed to the estate of the decedent, (6) the State~~
21 ~~Anatomical Board, or (7) the county board of the county in which~~
22 ~~death occurred.~~

23 The liability for the reasonable cost of interment the
24 final disposition of the remains of the deceased person devolves
25 jointly and severally upon all kin of the decedent in the same
26 degree of kindred and upon the estate of the decedent and, in cases
27 when the county board has the right to control disposition of the

1 remains under subdivision (7) of this section, upon the county in
2 which death occurred from funds available for such purpose.

3 Sec. 83. Section 71-1340, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-1340. A decedent, prior to his or her death, may
6 direct the preparation for type or place of ~~interment~~ the final
7 disposition of his or her remains, either by oral or written
8 instructions. If such instructions are in a will or other written
9 instrument, ~~he or she~~ the decedent may direct that the whole or any
10 part of such remains be given to a teaching institution,
11 university, college, or legally licensed hospital, to the Director
12 of Regulation and Licensure, or to or for the use of any nonprofit
13 blood bank, artery bank, eye bank, or other therapeutic service
14 operated by any agency approved by the Director of Regulation and
15 Licensure under rules and regulations established by the director.
16 The person or persons otherwise entitled to control the disposition
17 of the remains under this section shall faithfully carry out the
18 directions of the decedent.

19 If such instructions are contained in a will or other
20 written instrument, they shall be immediately carried out,
21 regardless of the validity of the will in other respects or of the
22 fact that the will may not be offered for or admitted to probate
23 until a later date.

24 This section shall be administered and construed to the
25 end that such expressed instructions of any person shall be
26 faithfully and promptly performed.

27 A funeral director and embalmer, physician, or cemetery

AM3131
LB 1021
LSN-03-13

AM3131
LB 1021
LSN-03-13

1 authority shall not be liable to any person or persons for carrying
2 out such instructions of the decedent, and any teaching
3 institution, university, college, or legally licensed hospital or
4 the Director of Regulation and Licensure shall not be liable to any
5 person or persons for accepting the remains of any deceased person
6 under a will or other written instrument as above set forth.".

7 2. Renumber the remaining sections and correct internal
8 references and the repealer accordingly.